

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-1707V

SARAH GRINDLE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 5, 2025

Bradley S. Freedberg, Bradley S. Freedberg, P.C., Denver, CO, for Petitioner.

Joseph Douglas Leavitt, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On November 18, 2022, Sarah Grindle filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the "Vaccine Act"). Petitioner alleged that she suffered a shoulder injury related to vaccine administration, a defined Table injury, caused by an influenza vaccine she received on September 29, 2021. Petition, ECF No. 1. On October 22, 2024, I issued a decision awarding compensation to Petitioner based on the parties' stipulation. ECF No. 39.

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Petitioner has now filed a motion for attorney's fees and costs, requesting an award of \$60,923.66 (representing \$60,024.25 in fees, plus \$899.41 in costs). Application for Fees and Costs ("Motion") filed November 8, 2024. ECF No. 43. Furthermore, counsel for Petitioner represents that Petitioner incurred no personal out-of-pocket expenses. ECF No. 43 at 2.

Respondent reacted to the motion on November 12, 2024, reporting that he is satisfied the statutory requirements for an award of fees and costs are met in this case, but deferring resolution of the amount to be awarded to my discretion. Respondent's Response to Motion at 2-3, ECF No. 44. Petitioner filed no reply thereafter.

I have reviewed the billing records submitted with Petitioner's request and find a reduction in the amount of fees to be awarded appropriate, for the reason stated below.

ANALYSIS

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). Counsel must submit fee requests that include contemporaneous and specific billing records indicating the service performed, the number of hours expended on the service, and the name of the person performing the service. See *Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313, 316-18 (2008). Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton v. Sec'y of Health & Human Servs.*, 3 F.3d 1517, 1521 (Fed. Cir. 1993) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). It is "well within the special master's discretion to reduce the hours to a number that, in [her] experience and judgment, [is] reasonable for the work done." *Id.* at 1522. Furthermore, the special master may reduce a fee request *sua sponte*, apart from objections raised by respondent and without providing a petitioner notice and opportunity to respond. See *Sabella v. Sec'y of Health & Human Servs.*, 86 Fed. Cl. 201, 209 (2009). A special master need not engage in a line-by-line analysis of petitioner's fee application when reducing fees. *Broekelschen v. Sec'y of Health & Human Servs.*, 102 Fed. Cl. 719, 729 (2011).

The petitioner "bears the burden of establishing the hours expended, the rates charged, and the expenses incurred." *Wasson v. Sec'y of Health & Human Servs.*, 24 Cl. Ct. 482, 484 (1991). The Petitioner "should present adequate proof [of the attorney's fees and costs sought] at the time of the submission." *Wasson*, 24 Cl. Ct. at 484 n.1. Petitioner's counsel "should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private

practice ethically is obligated to exclude such hours from his fee submission.” *Hensley*, 461 U.S. at 434.

ATTORNEY FEES

A. Attorney Hourly Rates

The hourly rates requested for attorneys Gurney Pearsall and Bradley Freedberg for all time billed through the end of 2024 are reasonable and consistent with our prior determinations, and shall be awarded herein.

B. Paralegal Tasks Billed at Attorney Rates

Review of the billing records submitted hereto reveals that a few of the tasks performed by attorneys in this matter are more properly billed using a paralegal rate.³ “Tasks that can be completed by a paralegal or a legal assistant should not be billed at an attorney’s rate.” *Riggins v. Sec’y of Health & Hum. Servs.*, No. 99-382V, 2009 WL 3319818, at *21 (Fed. Cl. Spec. Mstr. June 15, 2009). “[T]he rate at which such work is compensated turns not on who ultimately performed the task but instead turns on the nature of the task performed.” *Doe/11 v. Sec’y of Health & Hum. Servs.*, No. XX-XXXXV, 2010 WL 529425, at *9 (Fed. Cl. Spec. Mstr. Jan. 29, 2010). Although these billing entries are reasonable, they must be charged at a reduced rate comparable to that of a paralegal. **Application of the foregoing reduces the amount of fees to be awarded by \$6,538.55.**⁴

C. Litigation Costs

Petitioner has requested \$899.41 in litigation costs and has provided supporting documentation for all claimed costs. ECF No. 43-3. Respondent offered no specific

³ Entries considered paralegal in nature include drafting and filing basic documents such as an exhibit list, PAR Questionnaire, notice of filing exhibit list, statement of completion, cover sheet, joint notices not to seek review, updating exhibits lists, drafting request for medical records, following up on medical records requests, faxing documents, and emailing documents to client for signature. See specific billing entries dated: 9/20/22; 10/11/22; 10/19/22; 11/11/22; 11/18/22; 12/6/22; 1/23/23; 12/13/23, billed by Gurney Pearsall. See also specific billing entries dated: 5/27/22; 9/6/22; 9/7/22; 9/13/22; 9/19/22; 9/20/22; 10/4/22; 10/11/22; 10/12/22; 10/16/22; 10/19/22; 10/21/22; 10/25/22; 11/2/22; 11/18/22; 12/5/22; 1/22/23; 2/10/23; 5/4/23; 6/25/23; 7/9/23; 7/18/23; 10/25/23; 1/13/24; 6/17/24; 6/18/24; 11/7/24, billed by Bradley Freedberg. See ECF No. 43-2.

⁴ This amount consists of $(\$300.00 - \$177.00 = \$123.00 \times 1.80 \text{ hrs.}) + (\$315.00 - \$186.00 = \$129.00 \times 1.00 \text{ hrs.}) + (\$480.00 - \$177.00 = \$303.00 \times 12.50 \text{ hrs.}) + (\$515.00 - \$186.00 = \$329.00 \times 3.70 \text{ hrs.}) + (\$540.00 - \$197.00 = \$343.00 \times 3.45 \text{ hrs.}) = \$6,538.55$.

objection to the rates or amounts sought. I find the requested costs reasonable and hereby award them in full.

CONCLUSION

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). Accordingly, I hereby GRANT, in part, Petitioner's Motion for attorney's fees and costs. **I award a total of \$54,385.11 (representing \$53,485.70 in fees plus \$899.41 in costs) to be paid through an ACH deposit to Petitioner's counsel's IOLTA account for prompt disbursement.** In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk of Court shall enter judgment in accordance with this Decision.⁵

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

⁵ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.